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TAGS: EAIR ECON ETRD SENV EU
SUBJECT: UPDATE ON EUROPEAN EFFORTS TO INCLUDE
INTERNATIONAL AVIATION AND MARITIME EMISSIONS IN THE
EUROPEAN EMISSIONS TRADING SCHEME.

REF: A. 06 STATE 190254
¶B. 06 STATE 188369
¶C. 07 STATE 83246
¶D. 07 STATE 141724

¶1. (U) This is an action request. See paragraph four.

¶2. (SBU) SUMMARY. On October 24, 2008 European Ministers officially adopted a Directive to include international aviation in the European Union (EU) Emissions Trading Scheme (ETS). All flights arriving and departing from EU airports, including those of non-EU airlines, will be covered by the scheme. EU Member States must transpose the Directive into their domestic legislation by January 2010, and implementation will begin in 2012, with airlines required to provide baseline emissions data in 2009.

¶3. (SBU) European officials claim this will spur the international community to address greenhouse gas emissions from aircraft more quickly. They anticipate changes in U.S. climate change policy under the new Administration and may appear to assume that this would entail support for inclusion of international aviation in the EU ETS. This assumption is flawed: no matter what decisions the U.S. may take to address greenhouse gas emissions, there is strong bipartisan opposition to the EU unilaterally imposing its emissions trading scheme on U.S. air carriers. The longstanding U.S. view) shared by a majority of non-EU countries) is that inclusion of one country's airlines in another country,s trading scheme must be accomplished on the basis of mutual consent and agreement between governments. End Summary.

¶4. (U) ACTION REQUEST: Department anticipates that this dispute will be at the forefront of aviation policy in the coming year as well as an underlying part of ongoing climate negotiations. Below is a review of U.S. actions and positions that EU Posts may draw on in discussions with host government officials. We encourage reporting on any developments to Washington agencies. Please contact EEB/TRA/OTP Megan Walklet-Tighe or EUR/ERA Ben Rockwell with any questions.

¶5. (U) The EU is also contemplating action in the maritime domain. Information and an update are found at paragraphs 26-29.

BACKGROUND) The EU Proposal

¶6. (U) Under significant political pressure "to do something about aviation emissions," during the past three years the European Commission developed a legislative proposal that unilaterally extends the EU ETS to international civil aviation. At each step of the process, the United States and other countries have expressed deep concerns, citing, among many issues, the inconsistency with EU Member State international legal obligations under the Convention on International Civil Aviation ("Chicago Convention"), and violation of bilateral air services agreements, including the U.S.-EU Air Transport Agreement signed in April, 2007 (Reftels A & B). Despite strong international opposition, the EU has brushed off the concerns of the rest of the world, adopting EC Directive (Doc. 3647/08) on October 24th to include international aviation in the EU ETS.

¶7. (U) The Directive covers all flights arriving at and departing from EU airports, including those of non-EU airlines. Each airline will be required to surrender allowances for the total emissions of each flight, from departure to arrival. For example, for a flight from Los Angeles to London, the GHG emissions attributed to that flight while in U.S. domestic airspace and in international airspace over the high seas) in addition to emissions generated while within EU airspace - will count toward the

total emissions of that flight. Both EU and non-EU carriers will receive a certain number of allowances free of charge each year. Initially, overall emissions will be capped at the equivalent of 97% of average annual emissions generated between 2004 -2006, and the "free" allowances will be limited to 85% of that total. Carriers will be expected to buy any additional allowances they need via auction and via the trading market. Over time, the percentage of emissions allowed will fall, and the percentage of free allowances will decrease; it is expected carriers will eventually have to buy and sell 100% of their allowances. Recent industry estimates project the costs will reach as much as 6.7 billion dollars a year.

THE U.S. POSITION - Legal Analysis

¶8. (U) The EU plan is not only unworkable, it is unlawful. It violates EU Member States' international legal obligations under the Chicago Convention, and violates certain aspects of the U.S. - EU Air Transport Agreement, which is being provisionally applied as of March 30, 2008.

¶9. (U) Article 15 of the Chicago Convention prohibits imposition of "fees, dues or other charges" on airlines solely for the "right of transit over or entry into or exit from (a State's) territory of any aircraft of a contracting State." By requiring the surrender of valuable emissions allowances simply for the right to land or depart an EU airport and threatening to bar air carriers from the EU for non-participation, the EU proposal is directly contrary to Article 15.

¶10. (U) The EU has argued that Article 11 of the Chicago Convention supports its approach by providng that "(s)ubject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft ... shall be complied with by such aircraft upon entering or departing from or while within the territory of that State." This interpretation ignores the explicit requirement that the relevant laws and regulations be consistent with other provisions of the Convention, including Article 15, and is overbroad. Charging for aviation emissions emitted over the high seas, other countries' territories as well as over EU

states is not related to admission to EU territory. This interpretation implies that adoption of other laws of the admitting state) such as its labor laws) could be used as a condition of use of its airports.

¶11. (U) Moreover, emissions trading systems impose costs without providing any services, and can limit a carrier's operations. As such, they are inconsistent with key provisions of the U.S.-EU Air Transport Agreement. The Agreement restricts user charges to the full cost of providing services and prohibits the unilateral imposition of limits on the volume of traffic, frequency or regularity of service, or the aircraft types operated.

¶12. (U) In addition to the legal issues, the EU legislation is fundamentally flawed in several other respects. First, it places the bulk of liability for greenhouse gas emissions from aviation on the airlines, taking little account of well-documented inefficiencies in the European air traffic system and their contribution to excess fuel burn. Second, it does not preclude EU Member States from levying additional charges or taxes even if a foreign airline participates in the ETS. Hence, a foreign airline could pay two or three times for the same ton of CO2 emissions. Finally, the revenues generated from auctions of allowances are expected to go into the general revenue streams of EU member states with no obligation to improve aviation efficiency or address climate change issues.

Prospects Under the New U.S. Administration

¶13. (U) Public perception and political attitudes in the EU suggest that the EU is counting on the new U.S. Administration to bring about a change in the U.S. position

on this issue. While President-elect Obama endorsed the concept of cap and trade for greenhouse gas emissions as a Senator and during the campaign, he has taken no positon on unilateral inclusion of aviation in the ETS. There is clear bipartisan support (including through a sense of the Congress resolution) that unilateral inclusion is not acceptable. Influential members of Congress from both parties, including the Chairman of the House Transportation and Infrastructure Committee, will continue in leadership roles next year. Some have suggested that the EU's actions threaten to undermine the U.S.-EU trade relationship. Many also recall the dispute with the EU over "hushkitted" aircraft) when the EU sought to unilaterally ban certain aircraft from operating within the EU. This resulted in the United States taking legal action at the International Civil Aviation Organization (ICAO) and the EU being forced to repeal its legislation and replace it with legislation consistent with the Chicago Convention.

ICAO - A Global Approach

¶14. (U) The EU's action undermines ongoing work in ICAO. A global response is the most appropriate and effective solution to reduce aviation emissions and ICAO is the appropriate forum for such discussions. ICAO has been working to develop guidance on how to manage international aviation emissions for several years. The United States and much of the rest of the world believe inclusion of foreign airlines in emissions trading systems must be on the basis of mutual consent between governments. This position was endorsed at the September 2007 Triennial ICAO Assembly; the U.S., with the support of an overwhelming majority of ICAO contracting States, successfully included language in the Assembly Resolution that urged States not to implement an emissions trading scheme on other States' aircraft except on the basis of mutual agreement (Reftels D & E). The Europeans

) specifically the 42 countries comprising the EU and the European Civil Aviation Conference (ECAC)) nevertheless entered a formal "reservation," based on their view that the EU has the right to apply market-based measures (both emissions trading and greenhouse gas emission charges) on all operators of all States operating to, from, or within their territories.

¶15. (U) The Assembly also agreed to develop a comprehensive plan on international aviation and climate change, including formation by the ICAO Council of a senior-level "Group on International Aviation and Climate Change" (GIACC). The GIACC will develop a framework to limit or reduce international aviation's greenhouse gas emissions based on a global aspirational goal, likely linked to fuel efficiency improvements, to be achieved through voluntary measures, technological advances, operational measures, positive economic incentives and market-based measures. The ICAO Council will convene a high level meeting in advance of the next (2010) Assembly to present the program and recommendations from GIACC for ICAO review.

¶16. (SBU) The GIACC - which is comprised of 15 countries: Australia, Brazil, Canada, China, France, Germany, India, Japan, Mexico, Nigeria, Russia, Saudi Arabia, South Africa, the United States, and the United Kingdom - has met twice since the 2007 Assembly. At the most recent meeting in July, there was broad consensus on developing a global fuel efficiency goal for international aviation. Developing countries, however, are pressing to be exempted from taking any action, and other countries, particularly the Europeans, are pushing for more stringent measures beyond a fuel efficiency goal. While a positive outcome on fuel efficiency looks possible, consensus on applicability and further measures will likely be difficult. The next meeting is scheduled for February 2009.

¶17. (SBU) The EU touts the need for a global solution to climate change and aviation emissions, and purports to "lead the way" toward a global framework with the EU ETS. However, statements by EU officials downplaying the ICAO process and the continued progression of EU legislation suggest they intend to go their own way no matter what is decided on an

What is the U.S. Doing?

¶18. (U) The U.S. is an active participant in negotiations at ICAO. The U.S supports achievement of a performance-based approach at GIACC where countries agree on goals for the global aviation system and each country decides what measures are most cost-effective for achieving those goals.

¶19. (U) Underpinning the U.S. position is the environmental program that is part of the U.S. Next Generation Air Transportation (NextGen) Plan. This includes a systematic and comprehensive approach to dealing not only with aviation greenhouse gas emissions, but also with aviation noise and air quality issues. Dealing with the challenges of aviation and climate change include work on: better scientific understanding of aviation's impact on the environment, modernization of air traffic management technology and procedures, development of new lower-emissions and energy-efficient technologies for aircraft and engines, and identification and development of environmentally friendly, commercially viable alternative fuels. We are working to advance efforts in all of these areas and are partnering with like-minded states and industry around the world to promote emissions reductions. Indeed, the U.S. aviation industry has already pledged to improve energy efficiency by 30% by 2025.

¶20. (U) In the last 40 years, global aviation fuel efficiency has increased 70 percent and is expected to improve a further 25 percent by 2020. As fuel bills represent 25-30 percent of airline operating costs (the single largest cost for U.S.

carriers), strong incentives already exist for reducing fuel use. In fact, unlike EU airlines, U.S. operators have actually reduced their carbon footprint. Over the last seven years, U.S. air carriers have burned less fuel annually than in 2000, resulting in 77 million fewer tons of carbon emissions or the equivalent of removing two million cars from the road annually. While burning 3 percent less fuel, U.S. operators have grown, flying 20 percent more revenue passenger miles over the same period.

¶21. (U) Air traffic management modernization holds major near and medium-term promise for efficiency gains and, therefore, reductions in carbon emissions. Both the United States and the EU have undertaken modernization initiatives. These include plans to accelerate our major air traffic control initiatives, US NextGen and EU SESAR, to develop greener transatlantic flights faster over the next two years.

¶22. (U) More efficient aircraft and engine technology can offer important gains in the medium and long terms. Legislation before Congress, with bipartisan support, proposes a program to encourage the uptake of R&D results into more environmentally friendly aircraft and engine designs, similar to the EU's Clean Sky Joint Technology Initiative. Some new technologies that could be retrofitted to current aircraft may reduce fuel burn by seven to ten percent per aircraft, offering significant promise.

¶23. (U) The United States has also launched the Commercial Aviation Alternative Fuel Initiative (CAAFI) to explore the use of alternative fuels to reduce aviation emissions impacts, both local and global. Comprised of air carriers, manufacturers, airports, energy suppliers and distributors, and academic institutions, CAAFI has set goals to identify and have approved for use by civil aviation a synthetic fuel in the first half of 2009, a 50 percent bio-fuel by the end of 2010, and a 100 percent bio-fuel by the end of 2013. Several European research institutes and companies have joined us in this effort, and Boeing and Virgin Atlantic have undertaken an important project in this area as well.

¶24. (U) In sum, the U.S. believes that through a combination of enhanced air traffic management, improved aircraft technology, and alternative fuels it can achieve carbon-neutral growth of its aviation sector in the next decade. These and other examples show there are alternatives to imposing punitive measures on an industry that is already

DOUBTS FROM NEW MEMBER STATES AND TRANSPORT OFFICIALS

¶25. (SBU) The EU may make further changes to the provisions concerning aviation in their climate action plan. One thing that has become clear: many of the newer member states and those that are remote (e.g., Cyprus and Malta) or have remote territories (e.g., Portugal, Greece, France and Spain) have registered strong concerns regarding possible adverse affects to their economies. Moreover, as the directive falls within the jurisdiction of the Commission's DG-Environment, member states' environment ministries, and the European Parliament's Environment Committee, officials in transport ministries and the aviation industry continue to express doubt, albeit quietly, as to the likely effectiveness of the directive. Increasingly, they see it as costly without providing benefit, but are officially toeing the EU line. As this issue develops in the New Year, posts are encouraged to take advantage of any opportunities that arise where doubts about the EU's aviation proposal are expressed to make some of the key points outlined above.

A NOTE ABOUT MARITIME EMISSIONS

¶26. (SBU) The European Parliament is also actively focusing

on emissions from the maritime sector, and is seeking to include international shipping in the EU ETS. It has indicated it may be prepared to wait for the process in the International Maritime Organization (IMO) to play out; however, we anticipate that anything short of a global ETS will be insufficient. We are concerned that should the EU include international shipping in their ETS, it will short-circuit any possible agreement in the IMO.

¶27. (SBU) In October, the IMO Marine Environment Protection Committee (MEPC) made good progress on technical standards that could be incorporated into future mandatory greenhouse gas regulations: a design index to measure and regulate energy efficiency (i.e., CO2) of new ships, an operational index to measure CO2 output of existing ships in actual conditions, and best practices. Developing countries, however, held up political agreement on next steps based on their belief that action in IMO will set an adverse precedent in the United Nations Framework Convention on Climate Change (UNFCCC) negotiations. They demand that any new regulations should not apply to developing countries.

¶28. (SBU) The United States supports mandatory, global action but we believe that IMO should first focus on operational and technological efforts for energy efficiency in order to facilitate developing country involvement. The IMO will work further on the technical measures at an intersessional meeting in March 2009, with a view towards adoption at the next MEPC meeting in July 2009. At the July meeting, the MEPC will also discuss market-based measures, including an emissions trading system and a levy on bunker fuel.

¶29. (SBU) Continued opposition by developing countries to any mandatory requirements that apply to their ships could well stymie the IMO, as would their insistence that any action in IMO be consistent with the UNFCCC's common but differentiated responsibilities (CBDR) -- an approach fundamentally inconsistent with IMO's principle of no more favorable treatment.
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